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Attorneys for Plaintiff
JACK PEARSON

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Attorneys for Defendant
MONTEREY BAY AQUARIUM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACK PEARSON,)	CASE NO. C 04-01271 JW
)	
Plaintiff)	CONSENT DECREE AND ORDER
)	
vs.)	
)	
MONTEREY BAY AQUARIUM,)	
)	
Defendant.)	

1. PLAINTIFF JACK PEARSON filed this action to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and California civil rights laws against Defendant, MONTEREY BAY AQUARIUM FOUNDATION dba MONTEREY BAY AQUARIUM (the "Aquarium" or "Defendant"). PLAINTIFF has alleged that Defendant violated Title III of the ADA, sections 54.1, and 55 of the California Civil Code; sections 19952 and 19955 *et seq.*, of California Health and Safety Code; Government Code sections 4.450 *et seq.*, including section 4456; and Title 24 of the California Code of Regulations, by failing to provide full and equal access to the Aquarium, which is located in the City of Monterey, California, and related facilities.

2. Defendant has answered PLAINTIFF'S Complaint, denying all of plaintiff's allegations and by entering into this Consent Decree and Order does not admit liability for the matters alleged in PLAINTIFF'S Complaint filed in this action. The parties hereby enter into this Consent Decree and Order for the purpose of resolving the injunctive relief and monetary relief claims in this lawsuit without the need for protracted litigation, and without the admission of any liability.

DEFENDANT'S DENIALS AND NO ADMISSION OF LIABILITY

3. Defendant denies PLAINTIFF's allegations and, by entering into this Consent Decree, Order, And Judgment in no way admits to any liability whatsoever. In this regard, the parties enter into this Consent Decree, Order, And Judgment to amicably resolve all aspects of the Lawsuit without the need for further protracted litigation and to resolve all allegations raised in the Complaint on file herein. The parties agree that resolution of these matters without further litigation is in the public interest and that entry of this Order is the most appropriate means of resolving these matters. Accordingly, they agree to the entry of this Order without trial or further adjudication of any issues of fact or law.

JURISDICTION AND VENUE:

4. The parties agree that the Court has jurisdiction of this matter pursuant to 28 USC §1331 for violations of the Americans with Disabilities Act of 1990, 42 USC 12101 *et seq.* and pursuant to pendant jurisdiction for violations of California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Code of Regulations; and California Civil Code §§54; 54.1; §54.3; and 55.

5. Venue is proper in the Northern District of California, the judicial district in which the claims have arisen, pursuant to 28 U.S.C. § 1391(b).

SETTLEMENT OF ON-GOING LITIGATION

6. This Consent Decree And Order shall be a full, complete, and final disposition and settlement of all of PLAINTIFF's claims that have arisen out of the Complaint with respect to the Lawsuit.

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1 7. The Parties jointly request that, following entry of the Consent Decree, Order, and
2 Judgment set forth herein, the Court enter final judgment with respect to the Lawsuit.

3 8. The Court shall retain jurisdiction of this action to enforce the provisions of this
4 Consent Decree And Order for four (4) years from the date of this Order.

5 WHEREFORE, the parties hereby agree and stipulate to the Court's entry of this Consent
6 Decree and Order, which provides as follows:

7 **INJUNCTIVE RELIEF:**

8 9. The parties agree and stipulate that all of the remedial measures and modifications
9 set forth in **Exhibit A** as modified by its Addendum (**Exhibit B**), hereto will be performed in
10 compliance with the standards and specifications for disabled access as set forth in the California
11 Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines,
12 unless other standards are specifically agreed to in this Consent Decree and Order. These
13 remedial measures shall be completed within the timeframes specified in Exhibits A and B
14 hereto, which are expressly incorporated by referenced herein.

15 The parties hereto make no representations or warranties as to the accessibility of
16 facilities, exhibits and other features of the Aquarium that are not specifically addressed in this
17 Agreement or Exhibits A and B hereto. Such facilities, exhibits and other features are not part of
18 this Settlement Agreement and Consent Decree.

19 **DAMAGES AND ATTORNEY FEES, LITIGATION EXPENSES AND COSTS**

20 10. Defendant shall pay to PLAINTIFF the sum of ninety thousand dollars (\$90,000)
21 for all damages of PLAINTIFF (including but not limited to physical injuries) and all Attorneys'
22 fees, litigation expenses, and costs of PLAINTIFF. Said \$90,000 payment is to be made payable
23 to "Thimesch Law Offices, in trust for JACK PEARSON" and is to be dated and mailed
24 (postmarked) or delivered to Thimesch Law Offices, 171 Front Street, Suite 102, Danville, CA
25 94526 no later than fifteen (15) days from the date the Court signs and enters this Consent
26 Decree, Order and Judgment.

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ENTIRE CONSENT DECREE AND ORDER:

11. This Consent Decree and Order, and Exhibits A and B attached, constitutes the entire agreement between the parties on the matters of injunctive relief, and no other statement, promise, or agreement, either written or oral, made by any of the parties or agents of any of the parties, that is not contained in this written Consent Decree and Order, shall be enforceable regarding the matters described herein.

CONSENT DECREE AND ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:

12. Concerning the modifications and barrier removal described herein, this Consent Decree and Order shall be binding on JACK PEARSON and on THE AQUARIUM and on any successors in interest. The parties have a duty to so notify all such successors in interest of the existence and terms of this Consent Decree and Order during the period of the Court's jurisdiction of this consent decree.

TERM OF THE CONSENT DECREE AND ORDER:

13. This Consent Decree and Order shall be in full force and effect through three (3) years from the date of its entry by the Court. The Court shall retain jurisdiction of this action to enforce and interpret provisions of this Order and Decree until such time as it expires by its terms.

SEVERABILITY:

14. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542:

15. Except for all obligations required in this Consent Decree and Order, and plaintiff's remaining claims for damages and attorney fees, litigation expenses and costs, each of the parties to this Consent Decree and Order, on behalf of each, their respective agents, representatives, predecessors, successors, heirs, partners and assigns, releases and forever discharges each other party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs,

1 predecessors, and representatives of each other Party, from all claims, demands, damages,
 2 actions, and causes of action of whatever kind or nature, presently known or unknown, arising
 3 out of or in any way connected with the Lawsuit.

4 16. Each of the parties to this Consent Decree and Order understands and agrees that
 5 there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order,
 6 any or all of them will incur, suffer, or experience some further loss or damage with respect to
 7 the lawsuit which are unknown or unanticipated at the time this Consent Decree and Order is
 8 signed. Except for all obligations required in this Consent Decree and Order, the parties intend
 9 that this Consent Decree and Order apply to all such further loss with respect to the lawsuit,
 10 except those caused by the parties subsequent to the execution of this Consent Decree and Order.
 11 Therefore, except for all obligations required in this Consent Decree and Order, and plaintiff's
 12 remaining claims for permanent injunctive relief, damages, attorney fees, litigation expenses and
 13 costs, this Consent Decree and Order shall apply to and cover any and all claims, demands,
 14 actions and causes of action by the parties to this Consent Decree and Order with respect to the
 15 lawsuit, whether the same are known, unknown or hereafter discovered or ascertained, and the
 16 provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section
 17 1542 provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
 19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
 20 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
 21 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
 22 DEBTOR.

23 **SIGNATORIES BIND PARTIES:**

24 17. Signatories on the behalf of the parties represent that they are authorized to bind
 25 the parties to this Consent Decree and Order. This Settlement Agreement and Consent Decree

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 275 Battery Street, Suite 2000
 San Francisco, CA 94111

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1 may be signed by the parties in counterparts.

2 Dated: Aug 9, 2005


Plaintiff
JACK PEARSON


5 Dated: June __, 2005

Defendant
MONTEREY BAY AQUARIUM

8 APPROVED AS TO FORM:

10 Dated: Aug 9, 2005

THIMESCH LAW OFFICES

By: 
TIMOTHY S. THIMESCH
Attorneys for Plaintiff
JACK PEARSON

15 Dated: June __, 2005

GORDON & REES LLP

By: _____
MICHAEL D. BRUNO
Attorneys for Defendant
MONTEREY BAY AQUARIUM

ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

24 Dated: June __, 2005

HON. JAMES WARE
U.S. DISTRICT JUDGE



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San Francisco, CA 94111

1 may be signed by the parties in counterparts.

2 Dated: August __, 2005

Plaintiff
JACK PEARSON

5 Dated: August 17, 2005

Defendant
MONTEREY BAY AQUARIUM
Edward E. Prohaska
CFO

8 APPROVED AS TO FORM:

10 Dated: August __, 2005

THIMESCH LAW OFFICES

By: _____
TIMOTHY S. THIMESCH
Attorneys for Plaintiff
JACK PEARSON

15 Dated: August 17, 2005

GORDON & REES LLP

By: _____
BRIAN P. MASCHLER
Attorneys for Defendant
MONTEREY BAY AQUARIUM

ORDER

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

24 Dated: August __, 2005

HON. JAMES WARE
U.S. DISTRICT JUDGE

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Embarcadero Center West
275 Battery Street, Suite 2000
San Francisco, CA 94111

1 may be signed by the parties in counterparts.

2 Dated: August __, 2005

Plaintiff
JACK PEARSON

5 Dated: August __, 2005

Defendant
MONTEREY BAY AQUARIUM

8 APPROVED AS TO FORM:

10 Dated: August __, 2005

THIMESCH LAW OFFICES

12 By: _____
TIMOTHY S. THIMESCH
Attorneys for Plaintiff
JACK PEARSON

15 Dated: August 2, 2005

GORDON & REES LLP

17 By: _____
BRIAN P. MASCHLER
Attorneys for Defendant
MONTEREY BAY AQUARIUM

ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

24 Dated: August __, 2005

HON. JAMES WARE
U.S. DISTRICT JUDGE

JW

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ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.** The Clerk shall close the file, subject to being reopened on motion to enforce the provisions of the Consent Decree.

Dated: September 15, 2005


HON. JAMES WARE
U.S. DISTRICT JUDGE

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